



# Senate

General Assembly

**File No. 589**

*January Session, 2003*

Substitute Senate Bill No. 863

*Senate, April 30, 2003*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING BOATING SAFETY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 15-133 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 (a) The rules prescribed by this section shall apply on all state and  
4 federal waters.

5 (b) No person shall use a vessel in a manner [which] that  
6 unreasonably or unnecessarily interferes with free and proper  
7 navigation. Anchoring under a bridge, in a narrow channel or in a  
8 congested water not designated as an anchorage area [shall be deemed  
9 to be] is such interference, except in case of emergency.

10 (c) No person shall alter, deface or remove any capacity information  
11 label affixed to any vessel.

12 (d) No person shall operate a vessel: [or engage in water skiing

13 while under the influence of intoxicating liquor or any drug, or both.  
14 For the purposes of this subsection and sections 15-140l or 15-140n, a  
15 person shall be considered to be under the influence of intoxicating  
16 liquor if the ratio of alcohol in the blood of such person at the time of  
17 the alleged offense, as determined by methods prescribed in  
18 subsection (a) of section 15-140r, is ten-hundredths of one per cent or  
19 more of alcohol, by weight. No person arrested for a violation of this  
20 subsection shall operate a vessel or engage in water-skiing upon the  
21 waters of this state for a twenty-four-hour period after such arrest] (1)  
22 While under the influence of intoxicating liquor or any drug, or both,  
23 or (2) while such person has an elevated blood alcohol content. For the  
24 purposes of this section and sections 15-140l and 15-140n, as amended  
25 by this act, "elevated blood alcohol content" means: (A) A ratio of  
26 alcohol in the blood of such person that is eight-hundredths of one per  
27 cent or more of alcohol, by weight, or (B) if such person is under  
28 twenty-one years of age, a ratio of alcohol in the blood of such person  
29 that is two-hundredths of one per cent or more of alcohol, by weight.  
30 For purposes of this section and sections 15-140l, 15-140n, 15-140o and  
31 15-140q, as amended by this act, "operate" means that the vessel is  
32 underway or aground and not moored, anchored or docked.

33 (e) In any prosecution for a violation of subdivision (1) of subsection  
34 (d) of this section, evidence concerning the amount of alcohol in the  
35 defendant's blood or urine at the time of the alleged offense, as shown  
36 by a chemical analysis of the defendant's blood, breath or urine,  
37 otherwise admissible under subsection (a) of section 15-140r, shall be  
38 admissible only at the request of the defendant.

39 [(e)] (f) No person shall operate a vessel or engage in any activity  
40 contrary to the regulations [of] adopted by the commissioner.

41 [(f)] (g) No person shall moor a vessel to, obstruct, remove, damage  
42 or destroy any navigation aid or any device used to mark a restricted  
43 area.

44 [(g)] (h) Any person who violates the provisions of subsection (d) of  
45 this section shall: [be fined not less than one hundred dollars nor more

46 than five hundred dollars. Any person who violates any of the  
47 provisions of subsection (b), (c) or (f) of this section shall be fined not  
48 less than twenty-five dollars nor more than two hundred dollars. Any  
49 person who violates any of the provisions of the provisions of  
50 subsection (e) of this section shall have committed an infraction.] (1)  
51 For conviction of a first violation, (A) be fined not less than five  
52 hundred dollars nor more than one thousand dollars, and (B) be (i)  
53 imprisoned not more than six months, forty-eight consecutive hours of  
54 which may not be suspended or reduced in any manner, or (ii)  
55 imprisoned not more than six months, with the execution of such  
56 sentence of imprisonment suspended entirely and a period of  
57 probation imposed requiring as a condition of such probation that  
58 such person perform one hundred hours of community service, as  
59 defined in section 14-227e, and (C) have such person's safe boating  
60 certificate or certificate of personal watercraft operation, if any,  
61 suspended for one year; (2) for conviction of a second violation not  
62 later than ten years after a prior conviction for the same offense, (A) be  
63 fined not less than one thousand dollars nor more than four thousand  
64 dollars, (B) be imprisoned not more than two years, one hundred  
65 twenty consecutive days of which may not be suspended or reduced in  
66 any manner, and sentenced to a period of probation requiring as a  
67 condition of such probation that such person perform one hundred  
68 hours of community service, as defined in section 14-227e, and (C)  
69 have such person's safe boating certificate or certificate of personal  
70 watercraft operation, if any, suspended for three years or until the date  
71 of such person's twenty-first birthday, whichever is longer; and (3) for  
72 conviction of a third and subsequent violation not later than ten years  
73 after a prior conviction for the same offense, (A) be fined not less than  
74 two thousand dollars nor more than eight thousand dollars, (B) be  
75 imprisoned not more than three years, one year of which may not be  
76 suspended or reduced in any manner, and sentenced to a period of  
77 probation requiring as a condition of such probation that such person  
78 perform one hundred hours of community service, as defined in  
79 section 14-227e, and (C) have such person's safe boating certificate or  
80 certificate of personal watercraft operation, if any, permanently

81 revoked upon such third offense.

82 (i) The suspension of a safe boating certificate or certificate of  
83 personal watercraft operation imposed under subsection (h) of this  
84 section shall take effect immediately upon expiration of any period in  
85 which an appeal of any conviction under subsection (d) of this section  
86 may be taken, provided if an appeal is taken, the suspension shall be  
87 stayed during the pendency of such appeal. If the suspension takes  
88 effect, the defendant shall return, not later than the second business  
89 day after the suspension takes effect, by personal delivery or first class  
90 mail, the safe boating certificate or certificate of personal watercraft  
91 operation issued to the defendant.

92 (j) Any person who violates the provisions of subsection (b) of this  
93 section shall be fined not more than two hundred dollars. Any person  
94 who violates the provisions of subsection (c), (f) or (g) of this section  
95 shall be fined not less than one hundred dollars and not more than five  
96 hundred dollars. Any person who violates any of the provisions of  
97 subsection (f) of this section shall have committed an infraction.

98 (k) (1) A record shall be kept by the Superior Court of any  
99 conviction relating to the operation of a vessel. A summary of such  
100 record, with a statement of the number of the operator's safe boating  
101 certificate or certificate of personal watercraft operation shall, not later  
102 than five days after such conviction, forfeiture or any other disposition  
103 or nolle, be transmitted to the commissioner by such court. Each court  
104 shall report each conviction under subsection (d) of this section to the  
105 commissioner. The commissioner shall suspend the safe boating  
106 certificate or certificate of personal watercraft operation of the person  
107 reported as convicted for the period of time required by subsection (h)  
108 of this section.

109 (2) The safe boating certificate or certificate of personal watercraft  
110 operation of a person found guilty under subsection (d) of this section  
111 who is under eighteen years of age shall be suspended by the  
112 commissioner for the period of time set forth in subsection (h) of this  
113 section, or until such person attains the age of eighteen years,

114 whichever period is longer.

115 Sec. 2. Section 15-140l of the general statutes is repealed and the  
116 following is substituted in lieu thereof (*Effective October 1, 2003*):

117 (a) A person commits the offense of reckless operation of a vessel in  
118 the first degree while under the influence when, while under the  
119 influence of intoxicating liquor or any drug, or both, [he] or while such  
120 person has an elevated blood alcohol level content, such person  
121 operates a vessel at such speed or maneuvers a vessel in such a manner  
122 as to result in (1) death or serious physical injury to another person, or  
123 (2) damage to property in excess of [one] two thousand dollars.

124 (b) Any person guilty of reckless operation of a vessel in the first  
125 degree while under the influence shall be fined not less than two  
126 thousand five hundred dollars nor more than [one] five thousand  
127 dollars or imprisoned not more than [one year] two years, or both.

128 Sec. 3. Section 15-140n of the general statutes is repealed and the  
129 following is substituted in lieu thereof (*Effective October 1, 2003*):

130 (a) A person commits the offense of reckless operation of a vessel in  
131 the second degree while under the influence when, while under the  
132 influence of intoxicating liquor or any drug, or both, [he] or while such  
133 person has an elevated blood alcohol level content, such person  
134 operates a vessel at such speed or maneuvers a vessel in such a manner  
135 as to endanger the life, limb or property of another person.

136 (b) Any person guilty of reckless operation of a vessel in the second  
137 degree while under the influence shall be fined not less than [two  
138 hundred fifty] five hundred dollars nor more than [five hundred] one  
139 thousand dollars or imprisoned not more than six months, or both.

140 Sec. 4. Section 15-140o of the general statutes is repealed and the  
141 following is substituted in lieu thereof (*Effective October 1, 2003*):

142 (a) Any peace officer authorized to enforce the provisions of  
143 sections 15-129, 15-133, as amended by this act, 15-133b, 15-133c, 15-

144 140e, as amended by this act, to 15-140u, inclusive, 15-154 and 15-156  
145 who arrests an operator for a violation of subsection (d) of section 15-  
146 133, as amended by this act, or section 15-140k, 15-140l, as amended by  
147 this act, 15-140m or 15-140n, as amended by this act, may take the  
148 vessel operated in such violation into [his] such peace officer's custody  
149 and shall cause the same to be taken to and stored in a suitable place.  
150 There shall be no liability attached to such peace officer for any  
151 damages to such vessel while in [his] such peace officer's custody. All  
152 charges necessarily incurred by such peace officer in the performance  
153 of such duty shall be a lien upon such vessel. The owner or keeper of  
154 any marina or other place where such vessel is stored shall have a lien  
155 upon the same for [his] the storage charges and if such vessel has been  
156 stored for a period of not less than sixty days, such owner or keeper  
157 may sell the same for storage charges owed thereon, provided a notice  
158 of intent to sell shall be sent to the Commissioner of Environmental  
159 Protection, the Commissioner of Motor Vehicles, and the owner of  
160 such vessel, if known, five days before the sale of such vessel. If the  
161 owner is unknown, such sale shall be advertised by such marina  
162 owner or keeper in a newspaper published or having a circulation in  
163 the town where such marina or other place is located three times,  
164 commencing at least five days before the sale. The proceeds of such  
165 sale, after deducting the amount due such marina owner or keeper and  
166 all expenses of the peace officer who placed such vessel in storage,  
167 shall be paid to the owner of such vessel or [his] such owner's legal  
168 representatives, if claimed by [him] such owner or [them] owners at  
169 any time within one year from the date of such sale. If such balance is  
170 not claimed within said period, it shall escheat to the state.

171 (b) Any vessel [being] that is operated by a person who is arrested  
172 for a violation of section 15-140n, [shall] as amended by this act, in  
173 connection with such operation, or for a violation of section 15-140l, as  
174 amended by this act, after being involved in a boating accident, may be  
175 impounded for [twenty-four] a minimum of forty-eight hours after the  
176 arrest. Any vessel involved in a boating accident that results in death,  
177 serious physical injury, a missing person or property damage in excess  
178 of two thousand dollars may be seized for the collection of evidence

179 and held until the investigation of the boating accident or any related  
180 court proceedings are concluded. Any trailer utilized by the operator  
181 to transport such vessel may also be impounded to facilitate transport  
182 and handling of such vessel.

183       Sec. 5. Section 15-140q of the general statutes is repealed and the  
184 following is substituted in lieu thereof (*Effective October 1, 2003*):

185       (a) Any person who operates a vessel in this state shall be deemed  
186 to have consented to a chemical analysis of such person's blood, breath  
187 or urine, and if such person is a minor, such person's parent or parents  
188 or guardian shall also be deemed to have given their consent for such  
189 an analysis of the minor's blood, breath or urine.

190       [(a)] (b) If any such person, having been placed under arrest for: (1)  
191 [violating] Violating subsection (b) of section 53-206d; [, or for] (2)  
192 operating a vessel upon the waters of this state while under the  
193 influence of intoxicating liquor or any drug, or both; (3) operating a  
194 vessel upon the waters of this state while such person has an elevated  
195 blood alcohol content, and thereafter, after being apprised of [his] such  
196 person's constitutional rights, having been requested to submit to a  
197 blood, breath or urine test at the option of the police officer, having  
198 been afforded a reasonable opportunity to telephone an attorney prior  
199 to the performance of such test and having been informed that such  
200 person's safe boating certificate or certificate of personal watercraft  
201 operation issued by the commissioner as a condition of operating a  
202 vessel shall be suspended in accordance with the provisions of this  
203 section if such person refuses to submit to such test or if such person  
204 submits to such test and the results of such test indicate that such  
205 person has an elevated blood alcohol content and that evidence of any  
206 such refusal shall be admissible in accordance with subsection (d) of  
207 section 15-140r, as amended by this act, and may be used against [him]  
208 such person in any criminal prosecution, refuses to submit to the  
209 designated test, the test shall not be given; provided, if [the] such  
210 person refuses or is unable to submit to a blood test, the [police] peace  
211 officer shall designate the breath or urine test as the test to be taken.

212 The peace officer shall make a notation upon the records of the police  
213 department that such officer informed such person that such person's  
214 safe boating certificate or certificate of personal watercraft operation  
215 would be suspended if such person refused to submit to such test or if  
216 such person submitted to such test and the results of such test  
217 indicated that such person has an elevated blood alcohol content.

218 [(b) The provisions of this section shall not apply to any person  
219 whose physical condition is such that, according to competent medical  
220 advice, such test would be inadvisable.

221 (c) The state shall pay the reasonable charges of any physician who,  
222 at the request of a municipal police department, takes a blood sample  
223 for purposes of a test under this section.]

224 (c) If the person arrested refuses to submit to such test or analysis,  
225 or submits to such test or analysis commenced within two hours of the  
226 time of operation, and the results of such test or analysis indicate that  
227 at the time of the alleged offense such person had an elevated blood  
228 alcohol content, the peace officer shall immediately revoke the safe  
229 boating certificate or certificate of personal watercraft operation, if any,  
230 of such person for a twenty-four-hour period. The peace officer shall  
231 prepare a written report of the incident and shall mail the report  
232 together with any certificate taken into possession and a copy of the  
233 results of any chemical test or analysis, to the commissioner within  
234 three business days. The report shall be made on a form approved by  
235 the commissioner and shall be subscribed and sworn to under penalty  
236 of false statement as provided in section 53a-157b by the peace officer  
237 before whom such refusal was made or who administered or caused to  
238 be administered such test or analysis. If the person arrested refused to  
239 submit to such test or analysis, the report shall be endorsed by a third  
240 person who witnessed such refusal. The report shall set forth the  
241 grounds for the officer's belief that there was probable cause to arrest  
242 such person for operating such vessel while under the influence of  
243 intoxicating liquor or any drug, or both, or while such person has an  
244 elevated blood alcohol content and shall state that such person refused



245 to submit to such test or analysis when requested by such peace officer  
246 or that such person submitted to such test or analysis, commenced  
247 within two hours of the time of operation, and the results of such test  
248 or analysis indicated that such person at the time of the alleged offense  
249 had an elevated blood alcohol content.

250 (d) If the person arrested submits to a blood or urine test at the  
251 request of the peace officer, and the specimen requires laboratory  
252 analysis in order to obtain the test results, and if the test results  
253 indicate that such person has an elevated blood alcohol content, the  
254 peace officer, immediately upon receipt of the test results, shall notify  
255 and submit to the commissioner the written report required pursuant  
256 to subsection (c) of this section.

257 (e) Upon receipt of such report, the commissioner shall suspend the  
258 safe boating certificate or certificate of personal watercraft operation of  
259 such person effective as of a date certain, such date shall be no later  
260 than thirty-five days after the date such person received notice of such  
261 person's arrest by the peace officer. Any person whose safe boating  
262 certificate or certificate of personal watercraft operation is suspended  
263 in accordance with this subsection shall be entitled to a hearing before  
264 the commissioner to be held prior to the effective date of the  
265 suspension. The commissioner shall send a suspension notice to such  
266 person informing such person that such person's safe boating  
267 certificate or certificate of personal watercraft operation is suspended  
268 and shall specify the date of such suspension and that such person is  
269 entitled to a hearing prior to the effective date of the suspension and  
270 may schedule such hearing by contacting the commissioner not later  
271 than seven days after the date of mailing of such suspension notice.

272 (f) If such person does not contact the department to schedule a  
273 hearing, the commissioner shall affirm the suspension contained in the  
274 suspension notice for the appropriate period specified in subsection (i)  
275 of this section.

276 (g) If such person contacts the department to schedule a hearing, the  
277 commissioner shall assign a date, time and place for the hearing, which

278 date shall be prior to the effective date of the suspension. At the  
279 request of such person and upon a showing of good cause, the  
280 commissioner may grant one continuance for a period not to exceed  
281 thirty days. The hearing shall be limited to a determination of the  
282 following issues: (1) Whether the peace officer had probable cause to  
283 arrest the person for operating the vessel while under the influence of  
284 intoxicating liquor or drugs, or both, or while such person has an  
285 elevated blood alcohol content; (2) whether such person was placed  
286 under arrest; (3) whether such person (A) refused to submit to such  
287 test or analysis, or (B) submitted to such test or analysis, commenced  
288 within two hours of the time of operation, and the results of such test  
289 or analysis indicated that at the time of the alleged offense that such  
290 person had an elevated blood alcohol content; and (4) whether such  
291 person was operating the vessel. At the hearing, the results of the test  
292 or analysis shall be sufficient to indicate the ratio of alcohol in the  
293 blood of such person at the time of operation, except that if the results  
294 of an additional test, administered pursuant to section 15-140r, as  
295 amended by this act, indicate that the ratio of alcohol in the blood of  
296 such person is ten-hundredths of one per cent or less of alcohol, by  
297 weight, and is higher than the results of the first test, evidence shall be  
298 presented that demonstrates that the test results and analysis thereof  
299 accurately indicate the blood alcohol content at the time of operation.  
300 The fees of any witness summoned to appear at the hearing shall be  
301 the same as provided in section 52-260.

302 (h) If, after such hearing, the commissioner finds on any one of said  
303 issues in the negative, the commissioner shall stay the safe boating  
304 certificate or certificate of personal watercraft operation suspension. If,  
305 after such hearing, the commissioner does not find on any one of said  
306 issues in the negative or if such person fails to appear at such hearing,  
307 the commissioner shall affirm the suspension contained in the  
308 suspension notice for the appropriate period specified in subsection (i)  
309 of this section. The commissioner shall render a decision at the  
310 conclusion of such hearing or send a notice of the decision by certified  
311 mail to such person not later than thirty-five days from the date of  
312 notice of such person's arrest by the peace officer or, if a continuance is

313 granted, not later than sixty-five days from the date such person  
314 received notice of such person's arrest by the peace officer. The notice  
315 of such decision sent by certified mail to the address of such person as  
316 shown by the records of the commissioner shall be sufficient notice to  
317 such person that such person's safe boating certificate or certificate of  
318 personal watercraft operation is suspended or the suspension is  
319 stayed. Unless a continuance of the hearing is granted pursuant to  
320 subsection (g) of this section, if the commissioner fails to render a  
321 decision within thirty-five days from the date that such person  
322 received notice of such person's arrest by the peace officer, the  
323 commissioner shall not suspend such person's safe boating certificate  
324 or certificate of personal watercraft operation.

325 (i) The commissioner shall suspend the operator's safe boating  
326 certificate or certificate of personal watercraft operation of a person  
327 who does not contact the department to schedule a hearing under  
328 subsection (e) of this section, who fails to appear at such hearing, or  
329 against whom, after a hearing, the commissioner holds pursuant to  
330 subsection (g) of this section. Such suspension shall be as of the  
331 effective date contained in the suspension notice or the date the  
332 commissioner renders a decision, whichever is later, for a period of: (1)  
333 (A) Except as provided in subparagraph (B) of this subdivision, ninety  
334 days if such person submitted to a test or analysis and the results of  
335 such test or analysis indicated that at the time of the alleged offense  
336 that such person had an elevated blood alcohol content, or (B) one  
337 hundred twenty days if such person submitted to a test or analysis and  
338 the results of such test or analysis indicated that the ratio of alcohol in  
339 the blood of such person was sixteen-hundredths of one per cent or  
340 more of alcohol, by weight, or (C) six months if such person refused to  
341 submit to such test or analysis; (2) if such person has previously had  
342 such person's safe boating certificate or certificate of personal  
343 watercraft operation suspended under this section, (A) except as  
344 provided in subparagraph (B) of this subdivision, nine months if such  
345 person submitted to a test or analysis and the results of such test or  
346 analysis indicated that at the time of the alleged offense that such  
347 person had an elevated blood alcohol content, (B) ten months if such

348 person submitted to a test or analysis and the results of such test or  
349 analysis indicated that the ratio of alcohol in the blood of such person  
350 was sixteen-hundredths of one per cent or more of alcohol, by weight,  
351 and (C) one year if such person refused to submit to such test or  
352 analysis; and (3) if such person has two or more times previously had  
353 such person's safe boating certificate or certificate of personal  
354 watercraft operation suspended under this section, (A) except as  
355 provided in subparagraph (B) of this subdivision, two years if such  
356 person submitted to a test or analysis and the results of such test or  
357 analysis indicated that at the time of the alleged offense that such  
358 person had an elevated blood alcohol content, (B) two and one-half  
359 years if such person submitted to a test or analysis and the results of  
360 such test or analysis indicated that the ratio of alcohol in the blood of  
361 such person was sixteen-hundredths of one per cent or more of  
362 alcohol, by weight, and (C) three years if such person refused to  
363 submit to such test or analysis.

364 (j) Notwithstanding the provisions of subsections (b) to (i),  
365 inclusive, of this section, any peace officer who obtains the results of a  
366 chemical analysis of a blood sample taken from an operator of a vessel  
367 involved in an accident who suffered or allegedly suffered physical  
368 injury in such accident shall notify the commissioner and submit to the  
369 commissioner a written report if such results indicate that at the time  
370 of the alleged offense such person had an elevated blood alcohol  
371 content, and if such person was arrested for a violation of subsection  
372 (d) of section 15-133, as amended by this act, and sections 15-140l, as  
373 amended by this act, and 15-140n, as amended by this act, in  
374 connection with such accident. The report shall be made on a form  
375 approved by the commissioner containing such information as the  
376 commissioner prescribes and shall be subscribed and sworn under  
377 penalty of false statement, as provided in section 53a-157b, by the  
378 peace officer. The commissioner shall, after notice and an opportunity  
379 for hearing, which shall be conducted in accordance with chapter 54,  
380 suspend the safe boating certificate or certificate of personal watercraft  
381 operation of such person for a period of up to ninety days, or, if such  
382 person has previously had such person's operating privilege

383 suspended under this section, for a period up to one year. Each  
384 hearing conducted under this section shall be limited to a  
385 determination of the following issues: (1) Whether the peace officer  
386 had probable cause to arrest the person for operating a vessel or  
387 engaging in water skiing while under the influence of intoxicating  
388 liquor or drugs, or both, or while such person has an elevated blood  
389 alcohol content; (2) whether such person was placed under arrest; (3)  
390 whether such person was operating the vessel; (4) whether the results  
391 of the analysis of the blood of such person indicate that such person  
392 had an elevated blood alcohol content; and (5) whether the blood  
393 sample was obtained in accordance with conditions for admissibility as  
394 set forth in subsection (b) of section 15-140r, as amended by this act. If,  
395 after such hearing, the commissioner finds on any issue in the  
396 negative, the commissioner shall not impose a suspension. The fees of  
397 any witness summoned to appear at the hearing shall be the same as  
398 provided by the general statutes for witnesses in criminal cases.

399 (k) The provisions of this section shall apply with the same effect to  
400 the refusal by any person to submit to an additional chemical test as  
401 provided in subdivision (5) of subsection (a) of section 15-140r, as  
402 amended by this act.

403 (l) The provisions of this section do not apply to any person whose  
404 physical condition is such that, according to competent medical advice,  
405 such test would be inadvisable.

406 (m) The state shall pay the reasonable charges of any physician who,  
407 at the request of a municipal police department, takes a blood sample  
408 for purposes of a test under the provisions of this section.

409 (n) For the purposes of this section, "elevated blood alcohol content"  
410 means: (1) A ratio of alcohol in the blood of such person that is eight-  
411 hundredths of one per cent or more of alcohol, by weight, or (2) if such  
412 person is under twenty-one years of age, a ratio of alcohol in the blood  
413 of such person that is two-hundredths of one per cent or more of  
414 alcohol, by weight.

415     (o) The commissioner may adopt regulations, in accordance with  
416     chapter 54, to implement the provisions of this section.

417     Sec. 6. Section 15-140r of the general statutes is repealed and the  
418     following is substituted in lieu thereof (*Effective October 1, 2003*):

419     [(a) In any criminal prosecution for violation of section 15-140l or  
420     15-140n, subsection (a) of section 15-133 or]

421     (a) Except as provided in subsection (d) of this section, in any  
422     criminal prosecution for the violation of subsection (d) of section 15-  
423     133, as amended by this act, sections 15-140l and 15-140n, as amended  
424     by this act, and subsection (b) of section 53-206d, evidence respecting  
425     the amount of alcohol or drug in the defendant's blood or urine at the  
426     time of the alleged offense, as shown by a chemical analysis of the  
427     defendant's breath, blood or urine shall be admissible and competent  
428     provided: (1) The defendant was afforded a reasonable opportunity to  
429     telephone an attorney prior to the performance of the test and  
430     consented to the taking of the test upon which such analysis is made;  
431     (2) a true copy of the report of the test result was mailed to or  
432     personally delivered to the defendant within twenty-four hours or by  
433     the end of the next regular business day, after such result was known,  
434     whichever is later; (3) the test was performed by or at the direction of a  
435     certified law enforcement officer according to methods and with  
436     equipment approved by the Department of Public [Health] Safety and  
437     was performed. [by a person certified or recertified for such purpose  
438     by said department or recertified by persons certified as instructors by  
439     the Commissioner of Public Health.] If a blood test is taken, it shall be  
440     on a blood sample taken by a person licensed to practice medicine and  
441     surgery in this state, a qualified laboratory technician, an emergency  
442     medical technician II or a registered nurse [; (4)] in accordance with the  
443     regulations adopted under subsection (b) of this section; (4) the device  
444     used for such test was checked for accuracy [at the beginning of each  
445     workday and no later than the end of each workday by a person  
446     certified by the Department of Public Health; (5)] in accordance with  
447     the regulations adopted under subsection (b) of this section; (5) an

448 additional chemical test of the same type was performed [and the  
449 device was checked for accuracy by a person certified or recertified by  
450 the Department of Public Health,] at least thirty minutes after the  
451 initial test was performed or, if requested by the peace officer for  
452 reasonable cause, an additional chemical test of a different type was  
453 performed to detect the presence of a drug or drugs other than or in  
454 addition to alcohol, provided the results of the initial test shall not be  
455 inadmissible under this subsection if reasonable efforts were made to  
456 have such additional test performed in accordance with the conditions  
457 set forth in this subsection and such additional test was not performed  
458 or was not performed within a reasonable time, or the results of such  
459 additional test are not admissible for failure to meet a condition set  
460 forth in this subsection; and (6) evidence is presented [which  
461 demonstrates that the test results and the analysis thereof accurately  
462 reflect] that the test was commenced within two hours of operation of  
463 the vessel. In any prosecution under this section it shall be a rebuttable  
464 presumption that the results of such chemical analysis establish the  
465 ratio of alcohol in the blood of the defendant at the time of the alleged  
466 offense, except that if the results of the additional test indicate that the  
467 ratio of alcohol in the blood of such defendant is ten-hundredths of one  
468 per cent or less of alcohol, by weight, and is higher than the results of  
469 the first test, evidence shall be presented that demonstrates that the  
470 test results and the analysis thereof accurately indicate the blood  
471 alcohol content at the time of the alleged offense.

472 (b) The Commissioner of Public [Health] Safety shall ascertain the  
473 reliability of each method and type of device offered for chemical  
474 testing [purposes] and analysis of blood, of breath and of urine and  
475 certify those methods and types which [he] said commissioner finds  
476 suitable for use in testing and analysis of blood, [testing] breath and  
477 [testing] urine, respectively, in this state. [He] The Commissioner of  
478 Public Safety, after consultation with the Commissioner of Public  
479 Health, shall adopt regulations governing the conduct of chemical  
480 tests, the operation and use of chemical test devices and the training [,  
481 certification and annual recertification of operators of such devices as  
482 he] and certification of operators of such devices and the drawing or

483 obtaining of blood, breath or urine samples as said commissioner finds  
484 necessary to protect the health and safety of persons who submit to  
485 chemical tests and to insure reasonable accuracy in testing results.  
486 Such regulations shall not require recertification of a peace officer  
487 solely because such officer terminates such officer's employment with  
488 the law enforcement agency for which certification was originally  
489 issued and commences employment with another such agency.

490 (c) If a person is charged with a violation of subsection (d) of section  
491 15-133, as amended by this act, the charge may not be reduced, nolle  
492 or dismissed unless the prosecuting authority states in open court [his]  
493 such prosecutor's reasons for the reduction, nolle or dismissal.

494 (d) In any criminal prosecution for a violation of subsection (d) of  
495 section 15-133 or section 15-140l or 15-140n, as amended by this act,  
496 evidence that the defendant refused to submit to a blood, breath or  
497 urine test requested in accordance with section 15-140q, as amended  
498 by this act, shall be admissible provided the requirements of  
499 subsection (a) of said section have been satisfied. If a case involving a  
500 violation of subsection (d) of section 15-133 or section 15-140l or 15-  
501 140n, as amended by this act, is tried to a jury, the court shall instruct  
502 the jury as to any inference that may or may not be drawn from the  
503 defendant's refusal to submit to a blood, breath or urine test.

504 Sec. 7. Section 15-154 of the general statutes is repealed and the  
505 following is substituted in lieu thereof (*Effective October 1, 2003*):

506 (a) Any harbor master, deputy harbor master, conservation officer,  
507 special conservation officer or state police officer and any municipal  
508 police officer, any special police officer appointed under sections 29-18  
509 and 29-19, [or members of the volunteer police auxiliary force  
510 established under section 29-22,] any town marine officers appointed  
511 under section 15-154a and certified by the commissioner for marine  
512 police duty and any lake patrolman appointed under section 7-151b, as  
513 amended, may enforce the provisions of this chapter and chapter 446k,  
514 except that only peace officers shall enforce the provisions of  
515 subsection (d) of section 15-33, as amended by this act, and sections 15-



516 140l and 15-140n, as amended by this act. In the enforcement of this  
517 chapter, such officer may arrest, without previous complaint and  
518 warrant, any person who fails to comply with the provisions of this  
519 chapter. Failure to appear in court pursuant to such arrest, unless  
520 excused by the court or the state's attorney or assistant state's attorney,  
521 shall constitute sufficient cause for the suspension by the  
522 Commissioner of Motor Vehicles of the boat registration of the boat  
523 involved for not more than thirty days or until the matter is resolved  
524 by the court, whichever is sooner.

525 (b) When engaged in the enforcement of this chapter and chapter  
526 446k such officer shall have the authority to stop and board any vessel  
527 which is under way or which is moored on the waters of this state for  
528 the purposes of (1) examining decals, certificates and other documents,  
529 (2) inspecting safety equipment and waste disposal systems, (3)  
530 determining if the operation of such vessel exceeds the noise levels  
531 established in subsection (b) of section 15-129, (4) searching when [he]  
532 such officer has probable cause to believe that any provision of any  
533 law of this state or any rule or regulation of the Department of  
534 Environmental Protection relating to boating or water pollution has  
535 been violated, (5) determining compliance with [subsection (d)]  
536 sections 15-140l and 15-140n and subsections (d) and (e) of section 15-  
537 133, as amended by this act, when [he] such authorized officer has  
538 probable cause to believe said section or subsection has been violated,  
539 and (6) making arrests. No person operating a vessel shall refuse to  
540 stop [his] such vessel or, if sea conditions make stopping in that area  
541 unsafe, refuse to take [his] such vessel to a designated area after being  
542 requested or signalled to do so by [an authorized law enforcement]  
543 such officer. Any person operating a vessel who refuses to stop or  
544 refuses to take [his] such vessel to the designated area shall have  
545 committed an infraction. Any person, when signalled to stop by [an]  
546 such officer in a law enforcement vessel using an audible signal device  
547 or flashing blue lights, who operates [his] such vessel in disregard of  
548 such signal so as to (A) interfere with or endanger the operation of the  
549 law enforcement vessel or any other vessel, (B) endanger or cause  
550 damage to property or person, or (C) increase speed in an attempt to

551 escape or elude such law enforcement officer shall be fined not less  
552 than one hundred dollars nor more than five hundred dollars for a first  
553 offense and for any subsequent offense shall be fined not less than five  
554 hundred dollars nor more than one thousand dollars. Proof of the  
555 registration number of the vessel shall be prima facie evidence in any  
556 prosecution that the owner was the operator.

557 (c) The Commissioner of Environmental Protection shall publish an  
558 enforcement manual, conduct training and educational sessions, serve  
559 as liaison between the enforcement groups and the Superior Court and  
560 shall be generally responsible for the overall coordination of  
561 enforcement.

562 Sec. 8. Subsection (a) of section 15-140e of the general statutes is  
563 repealed and the following is substituted in lieu thereof (*Effective*  
564 *October 1, 2003*):

565 (a) On and after the following dates, no resident of the state, person  
566 owning real property in the state or person owning a vessel in the state  
567 shall operate on the waters of the state a vessel which is required to be  
568 registered or numbered pursuant to this chapter unless such person  
569 has a valid vessel operator license by the United States Coast Guard or  
570 has obtained a safe boating certificate issued by the Commissioner of  
571 Environmental Protection: For operators who are less than twenty  
572 years of age, June 23, 1993; for operators who are less than twenty-five  
573 years of age, October 1, 1993; for operators who are less than thirty  
574 years of age, October 1, 1994; for operators who are less than thirty-five  
575 years of age, October 1, 1995; for operators who are less than forty  
576 years of age, October 1, 1996; and for all operators forty years of age or  
577 older, October 1, 1997. Notwithstanding the provisions of this section,  
578 the commissioner may issue a certificate to a person who has  
579 successfully completed a course in safe boating operation approved by  
580 the commissioner before the date such person is required to take the  
581 exam under this section. A safe boating certificate [shall be  
582 nonrevocable] may be suspended or revoked, pursuant to section 15-  
583 133, 15-140l or 15-140n, as amended by this act, and shall be valid for

584 the life of the person to whom it is issued unless otherwise suspended  
585 or revoked.

586 Sec. 9. Section 15-133c of the general statutes is repealed and the  
587 following is substituted in lieu thereof (*Effective October 1, 2003*):

588 (a) On or before January 1, 1991, any person convicted of more than  
589 one violation of section 15-133 or 15-134 within any two-year period  
590 may not operate a motorboat powered by a motor in excess of five  
591 horsepower on the waters of the state for recreational purposes  
592 without first obtaining a boating safety certificate from the  
593 commissioner evidencing successful completion of a course in safe  
594 boat handling approved by the commissioner. The commissioner shall  
595 adopt regulations in accordance with the provisions of chapter 54  
596 establishing requirements for the issuance of boating safety certificates  
597 and the content of safe boat handling courses which shall include but  
598 not be limited to instruction in boat handling and navigation. The  
599 commissioner may designate [as his] an agent for giving such course  
600 and issuing such certificates: The United States Coast Guard Auxiliary,  
601 the United States Power Squadron, or any other person or organization  
602 [he] the commissioner deems qualified to act in such capacity.

603 (b) A certified copy of a conviction for a violation of section 15-133,  
604 as amended by this act, [or] 15-134, 15-140l, as amended by this act, or  
605 15-140n, as amended by this act, shall be sent within thirty days of  
606 conviction to the Commissioner of Environmental Protection without  
607 charge by the clerk of the court wherein such conviction has been had.

608 Sec. 10. Subsection (a) of section 14-227f of the general statutes is  
609 repealed and the following is substituted in lieu thereof (*Effective*  
610 *October 1, 2003*):

611 (a) Any person whose motor vehicle operator's license or  
612 nonresident operating privilege is suspended under subsection (h) of  
613 section 14-227a for a conviction of a second or subsequent violation of  
614 subsection (a) of said section or under section 14-227b for a second or  
615 subsequent time shall participate in a treatment program approved by

616 the Commissioner of Motor Vehicles. The commissioner shall not  
617 reinstate the operator's license or nonresident operating privilege of  
618 any such person until such person submits evidence to the  
619 commissioner that [he] such person has satisfactorily completed the  
620 treatment program. Any person whose certificate is suspended or  
621 revoked pursuant to sections 15-133, 15-140l or 15-140n, as amended  
622 by this act, shall participate in such treatment program.

623 Sec. 11. Subsection (a) of section 54-56g of the general statutes is  
624 repealed and the following is substituted in lieu thereof (*Effective*  
625 *October 1, 2003*):

626 (a) There shall be a pretrial alcohol education system for persons  
627 charged with a violation of section 14-227a and the provisions of  
628 sections 15-133, 15-140l and 15-140n, as amended by this act. Upon  
629 application by any such person for participation in such system and  
630 payment to the court of an application fee of fifty dollars, the court  
631 shall, but only as to the public, order the court file sealed, provided  
632 such person states under oath, in open court or before any person  
633 designated by the clerk and duly authorized to administer oaths,  
634 under penalties of perjury that such person has never had such system  
635 invoked in such person's behalf and that such person has not been  
636 convicted of a violation of section 53a-56b or 53a-60d, a violation of  
637 subsection (a) of section 14-227a before or after October 1, 1981, or a  
638 violation of subdivision (1) or (2) of subsection (a) of section 14-227a on  
639 or after October 1, 1985, and that such person has not been convicted in  
640 any other state at any time of an offense the essential elements of  
641 which are substantially the same as section 53a-56b or 53a-60d or  
642 subdivision (1) or (2) of subsection (a) of section 14-227a. Unless good  
643 cause is shown, a person shall be ineligible for participation in such  
644 pretrial alcohol education system if such person's alleged violation of  
645 section 14-227a caused the serious physical injury, as defined in section  
646 53a-3, of another person. The fee imposed by this subsection shall be  
647 credited to the Criminal Injuries Compensation Fund established by  
648 section 54-215.

649 Sec. 12. Section 15-140j of the general statutes is amended by adding  
650 subsection (h) as follows (*Effective October 1, 2003*):

651 (NEW) (h) A certificate of personal watercraft operation may be  
652 suspended or revoked in accordance with the provisions of section 15-  
653 133, 15-140l or 15-140n, as amended by this act.

654 Sec. 13. Subsection (b) of section 54-56g of the general statutes is  
655 repealed and the following is substituted in lieu thereof (*Effective*  
656 *October 1, 2003*):

657 (b) The court, after consideration of the recommendation of the  
658 state's attorney, assistant state's attorney or deputy assistant state's  
659 attorney in charge of the case, may, in its discretion, grant such  
660 application. If the court grants such application, it shall refer such  
661 person to the Court Support Services Division for assessment and  
662 confirmation of the eligibility of the applicant and to the Department  
663 of Mental Health and Addiction Services for evaluation. The Court  
664 Support Services Division, in making its assessment and confirmation,  
665 may rely on the representations made by the applicant under oath in  
666 open court with respect to convictions in other states of offenses  
667 specified in subsection (a) of this section. Upon confirmation of  
668 eligibility and receipt of the evaluation report, the defendant shall be  
669 referred to the Department of Mental Health and Addiction Services  
670 by the Court Support Services Division for placement in an  
671 appropriate alcohol intervention program for one year. Any person  
672 who enters the system shall agree: (1) To the tolling of the statute of  
673 limitations with respect to such crime, (2) to a waiver of such person's  
674 right to a speedy trial, (3) to complete ten or fifteen counseling sessions  
675 in an alcohol intervention program pursuant to this section dependent  
676 upon the evaluation report and the court order, (4) to accept placement  
677 in a treatment program upon recommendation of a provider under  
678 contract with the Department of Mental Health and Addiction Services  
679 pursuant to subsection (d) of this section or placement in a treatment  
680 program which has standards substantially similar to, or higher than, a  
681 program of a provider under contract with the Department of Mental

682 Health and Addiction Services if the Court Support Services Division  
683 deems it appropriate, and (5) if ordered by the court, to participate in  
684 at least one victim impact panel. The suspension of the motor vehicle  
685 operator's license of any such person pursuant to section 14-227b shall  
686 be effective during the period such person is participating in such  
687 program, provided such person shall have the option of not  
688 commencing the participation in such program until the period of such  
689 suspension is completed. If the Court Support Services Division  
690 informs the court that the defendant is ineligible for the system and the  
691 court makes a determination of ineligibility or if the program provider  
692 certifies to the court that the defendant did not successfully complete  
693 the assigned program or is no longer amenable to treatment, the court  
694 shall order the court file to be unsealed, enter a plea of not guilty for  
695 such defendant and immediately place the case on the trial list. If such  
696 defendant satisfactorily completes the assigned program, such  
697 defendant may apply for dismissal of the charges against such  
698 defendant and the court, on reviewing the record of the defendant's  
699 participation in such program submitted by the Court Support  
700 Services Division and on finding such satisfactory completion, shall  
701 dismiss the charges. If the defendant does not apply for dismissal of  
702 the charges against such defendant after satisfactorily completing the  
703 assigned program the court, upon receipt of the record of the  
704 defendant's participation in such program submitted by the Court  
705 Support Services Division, may on its own motion make a finding of  
706 such satisfactory completion and dismiss the charges. Upon motion of  
707 the defendant and a showing of good cause, the court may extend the  
708 one-year placement period for a reasonable period for the defendant to  
709 complete the assigned program. A record of participation in such  
710 program shall be retained by the Court Support Services Division for a  
711 period of seven years from the date of application. The Court Support  
712 Services Division shall transmit to the Department of Motor Vehicles a  
713 record of participation in such program for each person who  
714 satisfactorily completes such program. The Department of Motor  
715 Vehicles shall maintain for a period of seven years the record of a  
716 person's participation in such program as part of such person's driving

717 record. The Court Support Services Division shall transmit to the  
718 Department of Environmental Protection the record of participation of  
719 any person who satisfactorily completes such program who has been  
720 charged with a violation of the provisions of section 15-133, 15-140l or  
721 15-140n, as amended by this act. The Department of Environmental  
722 Protection shall maintain for a period of seven years the record of a  
723 person's participation in such program as a part of such person's  
724 boater certification record.

725 Sec. 14. Subsection (h) of section 15-144 of the general statutes is  
726 repealed and the following is substituted in lieu thereof (*Effective*  
727 *October 1, 2003*):

728 (h) (1) Any person who operates or any owner who permits the  
729 operation of a vessel on the waters of this state which has not been  
730 numbered or registered in accordance with the provisions of this  
731 chapter and any other applicable section of the general statutes, shall  
732 have committed a violation and shall be fined not less than twenty-five  
733 nor more than two hundred dollars for the first offense and for each  
734 subsequent offense shall be fined not less than two hundred dollars  
735 nor more than five hundred dollars. (2) No person shall use any vessel  
736 registration or registration decals that have been issued to another  
737 person pursuant to sections 15-142 to 15-144, inclusive. No person shall  
738 use a vessel registration or registration decals on any vessel other than  
739 the vessel for which such registration number or registration decals  
740 have been issued. Any person who violates any provision of this  
741 subdivision shall be fined not more than one hundred dollars or  
742 imprisoned not more than thirty days or both. (3) Any officer  
743 empowered to enforce the provisions of this chapter and any other  
744 applicable section of the general statutes who finds a vessel which is  
745 not numbered or registered in accordance with the provisions of this  
746 chapter and such discovery is subsequent to a violation of this chapter  
747 may make application to the court for a warrant to seize such vessel  
748 and take it into custody pending proof of payment of proper  
749 numbering or registration fees. No officer shall be liable for any act  
750 performed under the provisions of this subsection.

751 Sec. 15. Subsection (f) of section 15-134 of the general statutes is  
752 repealed and the following is substituted in lieu thereof (*Effective*  
753 *October 1, 2003*):

754 (f) (1) No individual, municipality, association or corporation shall  
755 place or cause to be placed on the waters of this state any marked  
756 course or jump ramp for use by any water skier or vessel without  
757 written authorization of the commissioner except on lakes or ponds  
758 owned by, and whose access is entirely under the control of, private  
759 landowners or lessees who all agree to the establishment of such  
760 course or ramp. On and after October 1, 1993, no new authorization  
761 shall be granted on any body of water with a surface area less than one  
762 hundred acres. Application for authorization shall be made on forms  
763 provided by the commissioner and shall be accompanied by: (A) A  
764 detailed map showing the proposed location of such marked course or  
765 jump ramp, (B) a detailed diagram of the proposed course markers or  
766 jump ramp, and (C) a detailed statement addressing the safety and  
767 environmental impact of such proposal.

768 (2) The commissioner shall hold [a public hearing] an informational  
769 meeting in the town or one of the towns in which authorization is  
770 sought, [to place such marked course or jump ramp,] giving all towns  
771 involved and all interested persons an opportunity to present their  
772 views regarding the proposed mark course or jump ramp. Any such  
773 informational meeting shall not be deemed to be a hearing under the  
774 provisions of chapter 54. Prior to issuing or denying such  
775 authorization the commissioner shall consider: (A) The completeness,  
776 accuracy and detail of the application, (B) public safety, (C) any  
777 environmental impacts directly related to the proposed marked course  
778 or jump ramp, and (D) the possible conflicts with other water uses.

779 (3) Any authorization issued by the commissioner pursuant to this  
780 subsection may contain such conditions as the commissioner deems  
781 necessary to safeguard public safety, welfare or the environment.

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|--|
| This act shall take effect as follows: |
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|           |                        |
|-----------|------------------------|
| Section 1 | <i>October 1, 2003</i> |
| Sec. 2    | <i>October 1, 2003</i> |
| Sec. 3    | <i>October 1, 2003</i> |
| Sec. 4    | <i>October 1, 2003</i> |
| Sec. 5    | <i>October 1, 2003</i> |
| Sec. 6    | <i>October 1, 2003</i> |
| Sec. 7    | <i>October 1, 2003</i> |
| Sec. 8    | <i>October 1, 2003</i> |
| Sec. 9    | <i>October 1, 2003</i> |
| Sec. 10   | <i>October 1, 2003</i> |
| Sec. 11   | <i>October 1, 2003</i> |
| Sec. 12   | <i>October 1, 2003</i> |
| Sec. 13   | <i>October 1, 2003</i> |
| Sec. 14   | <i>October 1, 2003</i> |
| Sec. 15   | <i>October 1, 2003</i> |

**ENV**      *Joint Favorable Subst. C/R*

JUD

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

| <b>Agency Affected</b>                     | <b>Fund-Type</b>         | <b>FY 04 \$</b> | <b>FY 05 \$</b> |
|--|--------------------------|-----------------|-----------------|
| Department of Environmental Protection     | Various - Cost           | Minimal         | Minimal         |
| Various Crim Justice Agencies              | GF - Cost/Revenue Gain   | Minimal         | Minimal         |
| Mental Health & Addiction Serv., Dept.     | Pre-Trial Account - Cost | None            | None            |
| Public Health, Dept.; Public Safety, Dept. | GF - Cost                | None            | None            |

Note: GF=General Fund

#### **Municipal Impact:**

| <b>Municipalities</b>  | <b>Effect</b> | <b>FY 04 \$</b> | <b>FY 05 \$</b> |
|------------------------|---------------|-----------------|-----------------|
| Various Municipalities | Cost          | None            | None            |

### **Explanation**

It is anticipated that enforcement of violations for operating a vessel or waterskiing while under the influence of alcohol or drugs and related crimes will be handled by the existing Department of Environmental Protection (DEP) and other state and municipal law enforcement personnel. The bill will affect the procedures that are utilized and change the penalties, but is not anticipated to impact the numbers of boaters that are stopped. Any increase in workload to the DEP due to potential hearings under the administrative procedure for suspending a person's safe boating certificate is anticipated to be minimal.

Adoption of regulations by the DEP is anticipated to minimally increase their workload and divert staff away from current duties. It is anticipated that the DEP will use the Department of Motor Vehicles

(DMV) regulations as a model (since provisions in the bill parallel DMV's), which will reduce the work associated with the regulation.

The bill would also result in a minimal impact to various criminal justice agencies to enforce the increased penalties, which could include incarceration and the imposition of fine, since relatively few offenses occur.

The bill also allows those charged for the first time of an elevated blood alcohol content while boating to participate in the Pretrial Alcohol Education System program. This program provides alcohol education counseling to certain individuals charged with drunk driving, and is supported by participant fees. These additional clients will result in additional program expenses as well as offsetting revenue from fees for the restricted, non-General Fund Pretrial Account, operated by the Department of Mental Health and Addiction Services. Therefore, there is no net fiscal impact from the potential increased caseload.

Requiring that tests be conducted by Department of Public Safety (DPS) certified personnel and that devices for blood, breath and urine testing be checked in accordance with DPS regulations instead of the Department of Public Health (DPH) conforms with current practice. Commencing in FY 00, all staff and resources of the DPH's Toxicology/Criminology Laboratory were moved under the DPS. PA 99-218 assigned the responsibility for ascertaining the reliability of each method/type of device to the DPS.

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**OLR Bill Analysis**

sSB 863

**AN ACT CONCERNING BOATING SAFETY****SUMMARY:**

This bill makes the laws governing boating while under the influence of alcohol or drugs parallel in some ways to those governing driving while under the influence, thereby substantially increasing the penalties that apply under the boating laws.

Under the bill, a boater is considered to have implicitly consented to tests to determine his blood alcohol content (BAC). It requires an officer who arrests a person for boating while under the influence or related crimes to revoke temporarily that person's authority to engage in boating if he (1) refuses to submit to the test or (2) has an "elevated" BAC. Under the bill, an elevated BAC is (1) .02% if the person is under 21 and (2) .08% for anyone else. Under current law, the criminal penalties for boating while under the influence apply to any boater with a BAC of .10% or more.

The bill establishes an administrative procedure for suspending the person's safe boating certificate or certificate of personal watercraft operation (a "certificate"), which are required for legal boating, and permits suspension or revocation for both types of certificates, depending on the offense. The procedure, which parallels the administrative *per se* law for drunk driving, applies if the boater fails to submit to a test or has test results that indicated he was under the influence. This procedure is independent of criminal prosecutions for boating while under the influence. The bill establishes a separate administrative suspension procedure if the boater was injured in an accident and arrested for operating under the influence and reckless boating.

The bill increases the criminal penalties for boating under the influence and applies them to boating with an elevated BAC. Under current law, the penalty is a fine of \$100 to \$500, regardless of the number of previous offenses. Under the bill, the penalty depends on the number of prior offenses. For a first offense, it imposes a prison term or

probation with community service. For subsequent offenses, it imposes a prison term, probation, and community service. The bill also requires suspension of the person's safe boating certificate or certificate of personal watercraft operation for a first or second offense and revocation for a third offense. Under current law, a boating safety certificate is not revocable. The bill makes engaging in activity contrary to the Department of Environmental Protection (DEP) boating regulations subject to both a fine and the penalty for infractions (see COMMENT).

The bill expands the definition of reckless boating under the influence and increases the penalty for this crime.

It modifies the standards under which test results are admissible in criminal proceedings for boating under the influence, including allowing of retesting standards to test for drugs other than or in addition to alcohol.

The bill requires all offenders to participate in an alcohol education and treatment program, including allowing first time offenders who qualify to participate in a pretrial alcohol education and prevention program.

It broadens the powers of peace officers to stop and seize boats for violations of boating laws, but limits who may enforce certain laws. It requires courts and DEP to keep certain records of violations of boating laws. It increases fines for several boating laws.

It also (1) subjects those who misuse a boat registration to a fine, imprisonment, or both, (2) changes the law on marked courses or jump ramps (water skiing courses), and (3) eliminates water skiing under the influence as a crime.

EFFECTIVE DATE: October 1, 2003

### **IMPLIED CONSENT**

Under the bill, anyone who operates a boat or water skis in the state is considered to have consented to a chemical test of his blood, breath, or urine. If the person is a minor, his parents or guardians are also considered to have given their consent. An implied consent provision currently exists for driving but not boating.

Under current law, if a person is arrested for (1) operating a boat while under the influence or (2) carrying a loaded firearm while under the influence or with a BAC of .10% or more, the arresting officer must ask him to submit to an alcohol test. The bill limits the officers who can arrest people for these offenses to peace officers (e.g., state and local police, conservation officers, and certain special police officers).

The bill also extends the testing provision to people arrested for boating with an elevated BAC. It extends the following existing requirements to arrests for this crime: (1) the officer must inform the person of his constitutional rights and that refusing to submit to the test may be used against him in a criminal prosecution; (2) the person must be given an opportunity to telephone an attorney before taking the test; (3) if he agrees to testing but cannot or will not submit to a blood test, the officer chooses between a urine or breath test; and (4) if he refuses to submit to any test, no test is given.

For these arrests, those for operating a boat, or those for hunting under the influence, the bill requires the officer to inform the person that his personal watercraft operation or safe boating certificate will be suspended if he refuses to take the test or if the test indicates that he had an elevated BAC. The officer must note that he has complied with this requirement on the police department record.

### **TEMPORARY REVOCATION**

Under the bill, the officer must immediately revoke the arrested person's operating privilege if he (1) refuses to take an alcohol test or (2) the results of a test taken within two hours of his arrest indicate an elevated BAC. The revocation, which is made on behalf of the DEP commissioner, is for 24 hours. The bill repeals the current ban on a person arrested for boating or water skiing under the influence from engaging in either activity for 24 hours after the arrest.

Under the bill, the officer must submit a sworn report of the incident on a DEP-approved form. The report must describe the officer's reasons for believing there was probable cause to arrest the person for boating (1) while under the influence or (2) with an elevated BAC. The report must state whether the person refused to submit to the test or took a test that began within two hours and showed he had an elevated BAC at the time of the alleged offense. The officer must sign

the form under penalty of false statement. If the person refused to take the test, a third party who witnessed the refusal must also sign the report.

The peace officer must mail the following documents to the commissioner within three business days: the report, any certificate the officer took into his possession, and the results of any tests or analyses. If the arrested person takes a blood or urine test that requires laboratory analysis, the officer must notify the commissioner and submit the report immediately upon receiving results indicating the person's BAC was elevated.

### **ADMINISTRATIVE SUSPENSION**

The bill establishes an administrative procedure to suspend the person's operating privilege or boating certificate. (The parallel provision in motor vehicle law is called administrative *per se*.) This suspension is independent of any criminal penalties that may apply.

#### **Notice**

Upon receiving the officer's report, the commissioner must suspend the person's boating certificate. The suspension must take place within 35 days after the person was arrested. The commissioner must send a notice informing the person of the suspension, when it takes effect, and that he is entitled to a hearing. The notice must inform him that he can schedule the hearing by contacting DEP within seven days after the notice is mailed. If he does not contact DEP during this period, the commissioner must affirm the suspension.

If the person contacts DEP, it must set a date, time, and place for the hearing. (The date must be before the suspension takes effect.) If the person requests a continuance and shows good cause, the commissioner can grant one for up to 30 days.

#### **Hearing**

Under the bill, the hearing is limited to the following five questions:

1. Did the officer have probable cause to arrest the person for boating  
(a) while under the influence or (b) with an elevated BAC?

2. Was the person arrested?
3. Did he refuse to submit to the test, or did the results of a test begun within two hours indicate that he had an elevated BAC when the alleged offense occurred?
4. Was he operating the boat?
5. Was the blood sample obtained in accordance with conditions for admissibility standards for criminal prosecutions of boating while under the influence cases?

At the hearing, the test results are generally sufficient to indicate the person's BAC when he was boating. But evidence must be submitted that these test results accurately reflect the person's BAC at that time if the second test required by the admissibility standards (described below) (1) indicates a BAC of .10% or less and (2) is higher than the first result.

The fees for witnesses summoned to appear at the hearing are the same as those for criminal and civil cases.

### ***Suspension***

Under the bill, a negative answer to any of these five questions requires the commissioner to stay the suspension (presumably requiring the commissioner to also return any certificate that had been temporarily revoked and sent to him). If all questions result in affirmative findings, or if the person did not appear at the hearing, the commissioner must affirm the suspension.

The commissioner must send the person notice of his decision within 35 days of the arrest (65 days if a continuance was granted). The notice must be sent by certified mail. If there was no continuance and the commissioner does not make his decision within the 35-day period, he may not suspend the certificate or operating privilege.

The commissioner must suspend the certificates allowing operating privilege if the person (1) fails to request a hearing, (2) fails to appear at a scheduled hearing, or (3) appears but loses. Table 1 describes the suspension periods, which begin on the date the commissioner makes the decision or the date specified in the suspension notice, whichever



is later.

**Table 1: Administrative License Suspension Periods**

|                            | <i>First<br/>Offense</i> | <i>Second<br/>Offense</i> | <i>Third or Subsequent<br/>Offense</i> |
|----------------------------|--------------------------|---------------------------|--|
| <b>Test Refused</b>        | 6 months                 | 1 year                    | 3 years                                |
| <b>BAC of .16% or more</b> | 120 days                 | 10 months                 | 2 years, 6 months                      |
| <b>Other elevated BAC</b>  | 90 days                  | 9 months                  | 2 years                                |

The penalties also apply to someone who takes the initial test but refuses to take the second test. They are in addition to any suspension penalties imposed by the criminal court.

These provisions do not apply to someone whose condition makes such tests medically inadvisable. DEP may adopt regulations to implement these provisions.

### ***Special Provisions for Injury Accidents***

Somewhat different provisions apply if the officer obtains test results from a boater who was in an accident where he suffered or is alleged to have suffered an injury. In such cases, the officer must notify the commissioner if (1) the test results indicate that the boater had an elevated BAC and (2) the boater was arrested for (a) boating under the influence or with an elevated BAC and (b) both 1<sup>st</sup> and 2<sup>nd</sup> degree reckless boating under the influence in connection with the accident. (although it appears that the bills intent is that a person could be charged with one instead of both of these).

The commissioner must provide the boater notice and an opportunity for a hearing before suspending his operating privilege. It appears that the timeline described above for holding the hearing does not apply in these cases, but the bill specifies the hearing must be conducted in accordance with Uniform Administrative Procedure Act. This law requires the hearing notice to list the time, place, and nature of hearing, but does not specify a timeline for hearings.

The bill modifies two of the five questions the hearing must address. First, as noted above, one of the questions the bill requires to be

addressed at the hearing is whether the boater (1) refused to submit to the test or (2) took a test that indicated an elevated BAC at the time of the offense. Under the bill, the first part of this question does not apply in the injury accident cases (presumably because the police obtained a blood sample from another source such as a hospital).

The second modification is the inclusion of engaging in water skiing for injury accidents. That is, the question in these instances is whether the officer had probable cause to arrest the person for boating or water skiing (a) while under the influence or (b) with an elevated BAC. (The bill eliminates all other references to water skiing except for this one, including applicable penalties for water skiing under the influence, and would require that the question as to whether the water skier was operating the boat be asked at a hearing.)

If any of the five conditions are not met, the commissioner cannot suspend the boater's operating privilege.

In such accident cases, the penalty for a first offense is suspension for up to 90 days and for a subsequent offense, up to one year.

## **CRIMINAL PROSECUTIONS**

### ***Threshold***

The law prohibits operating a boat while under the influence of alcohol or any drug. Under current law, a boater is considered under the influence of alcohol if his BAC is .10% or more. The bill eliminates this definition, thereby allowing a boater to be convicted if he is found to have operated a boat while under the influence of alcohol or drugs, independent of his BAC. But the bill provides that, in any prosecution under this provision, otherwise admissible evidence regarding the BAC of the boater's blood or urine, shown by a chemical analysis of his blood, urine, or breath, is only admissible at his request. The bill specifies that "operate" in this and relevant sections means that the vessel is underway or run aground and not moored, anchored, or docked.

The bill additionally prohibits boating with an elevated BAC (.02% if the person is under age 21 and .08% for anyone else).

### ***Evidence Admissibility Standards***

Current law specifies the circumstances under which test results are admissible in criminal prosecutions of boating while under the influence, reckless boating, and carrying a loaded firearm while under the influence. Among other things, the law specifies who can perform a test and how the testing device must be checked for accuracy. It requires there be two tests of the same type (breath, blood, or urine). The law currently requires the Department of Public Health (DPH) commissioner to determine the reliability of each testing device and method. It requires him to adopt regulations for conducting tests, using testing devices, training device operators, and their certification and annual recertification.

The bill instead requires the tests to be conducted by Department of Public Safety (DPS)-certified personnel. It requires that the tests be conducted and the devices checked in accordance with DPS regulations, eliminating the DPH regulations. It requires the DPS commissioner to consult with the DPH commissioner in developing the regulations. It eliminates the requirement that the regulations require annual recertification of device operators. It bars the regulations from requiring recertification of a peace officer just because he leaves one department and starts work for another. It requires the regulations to cover the drawing or obtaining of blood, breath, and urine samples as the DPS commissioner finds necessary to protect the health and safety of arrested persons and to insure accuracy in testing. It requires the commissioner to determine the reliability of analytic, as well as testing, devices and methods.

The bill requires evidence be presented that the test began within two hours of the operation of the boat (even in firearms cases). It establishes a rebuttable presumption that the test results establish the person's BAC at the time of the alleged offense. But evidence must be submitted demonstrating this relationship if the person's second test result (1) indicates a BAC of .10% or less and (2) is higher than the results of his first test. By law, a second test must be performed at least 30 minutes after the initial test. The bill also permits a peace officer with reasonable cause to request an additional chemical test (different from the type first used to detect alcohol) to detect the presence of a drug or drugs other than or in addition to alcohol.

By law, evidence that a defendant in a boating under the influence incident refused to submit to an alcohol test is admissible, and the

court must instruct a jury about what inferences may or may not be drawn from the refusal. The bill extends these provisions to reckless boating under the influence prosecutions.

The bill also requires the state to pay reasonable charges of a doctor who, at the request of a city's police department, takes a blood sample for the purposes of these provisions.

### ***Penalties***

Under current law, a person operating a boat or water skiing under the influence is subject to a fine of \$100 to \$500. The bill (1) increases the fine, (2) requires imprisonment or community service, (3) requires the suspension of the boater's certificate for a first offense, and (4) eliminates the penalty for water skiing. It establishes enhanced penalties for second and subsequent offenses within 10 years of a prior conviction. All the prescribed penalties must be assessed. The new penalties are described in Table 2.

**Table 2: Bill's Penalties for Operating a Boat While Under the Influence**

| <i>Offense (must be the same offense)</i> | <i>Fine</i>     | <i>Prison/Community Service (CS)</i>   | <i>Suspension</i>   |
|---|-----------------|--|---|
| <b>First</b>                              | \$500-\$1,000   | Up to six months, 48 consecutive hours non-suspendable OR probation and 100 hours CS | One year  |
| <b>Second</b>                             | \$1,000-\$4,000 | Two years, 120 consecutive days non-suspendable AND probation and 100 hours CS       | Three years, or until he turns age 21, which ever is longer |
| <b>Third or subsequent</b>                | \$2,000-\$8,000 | Three years, one year non-suspendable  | Permanent revocation  |

|  |  |                                      |  |
|--|--|--------------------------------------|--|
|  |  | AND<br>probation and<br>100 hours CS |  |
|--|--|--------------------------------------|--|

The suspension for a boater who is under age 18 is for the period specified above, or until he turns age 18, whichever is longer. (Thus, the certificate of a 17-year-old convicted of a second offense will remain suspended until he turns age 21).

A suspension goes into effect when the period for taking an appeal of the conviction ends. The suspension is stayed during an appeal. Within two business days of a suspension taking effect, the defendant must mail or deliver his safe boating or personal watercraft operation certificate. These provisions do not appear to apply to revocations.

The bill requires anyone whose certificate is suspended for boating or reckless boating under the influence to attend an alcohol education and treatment program and makes a conforming change.

The bill parallels driving under the influence laws by allowing first time offenders to attend a pretrial alcohol education and prevention program (in cases where no one was seriously injured or killed, unless good reason is shown). The pretrial option allows offender's to have their record closed to the public after swearing under oath that this was the first offense and paying a \$50 fee.

### **RECKLESS BOATING**

The bill broadens the scope and increases the penalty for reckless boating under the influence. Under current law, a person is guilty of this crime in the 1<sup>st</sup> degree if he (1) operates a boat while under the influence (i.e., has a BAC of .10% or higher) and (2) kills or seriously injures someone or causes more than \$1,000 in property damage. The bill eliminates the specific BAC standard for operating under the influence. It extends the law to cover cases in which the boater has an elevated BAC (.10%, .07%, or .02%, depending on the circumstances). It also raises the property damage threshold to \$2,000. Under current law, the penalty for this crime is a fine of \$500 to \$1,000, imprisonment for up to one year or both. The bill increases the fine to \$2,500 to \$5,000 and prison term up to two years.

Under current law, the crime of reckless operation in the 2<sup>nd</sup> degree

applies to people who operate boats while under the influence (.10% BAC) in a way that endangers another person's life, limb, or property. The bill extends this provision to people boating with an elevated BAC. Under current law, the penalty is a fine of \$250 to \$500, imprisonment for up six months, or both. The bill increases the fine to \$500 to \$1,000.

Under current law, a boat that was operated by a person arrested for 2<sup>nd</sup> degree reckless boating under the influence must be impounded for 24 hours after the arrest. The bill allows boats to be impounded for 48 hours or more. It extends this provision to any boat whose operator was arrested for 1<sup>st</sup> degree reckless boating under the influence after being involved in a boating accident.

### **POWERS OF LAW ENFORCEMENT OFFICERS**

By law, a wide variety of officers can stop and board any boat moored or underway to determine compliance with boating laws. They include harbor masters, conservation officers, special police officers, voluntary auxiliary force members, municipal police, and state and local police officers. The bill extends to peace officers the power to include determining compliance with the laws that bar operating a boat or reckless boating under the influence, thereby excluding harbor masters and deputy harbor masters from the extension. The bill also eliminates members of a voluntary police auxiliary from those who may enforce boating laws.

For reckless boating in the 2<sup>nd</sup> degree, the bill allows a peace officer authorized to enforce the boating laws to take the arrested person's boat. This is a separate offense from reckless boating under the influence in the 2<sup>nd</sup> degree and covers such things as operating a boat beyond its carrying capacity. The bill extends to such boats provisions that apply to boats taken pursuant to arrests for other boating laws. Among other things, the provisions (1) make the charges incurred by the officer and the marina where the boat is stored a lien on the boat and (2) allow the marina owner to sell the boat if it is not claimed within 60 days.

The bill allows any boat involved in an accident resulting in death, serious injury, a missing person, or property damage greater than \$2,000 to be seized for the collection of evidence. It allows such boats to be held until the accident investigation or court proceedings are

over. It also allows the trailer used to transport the boat to be impounded to facilitate the boat's transportation and handling.

It also makes minor conforming changes.

### **Record-Keeping**

The bill requires the courts to keep a record of boating law violations. The court must send a summary of each case record to the DEP commissioner within five days of a conviction, forfeiture, *nolle*, or other disposition. The summary must include the operator's safe boating certificate or certificate of personal watercraft operation number. Under current law, the court must notify DEP within 30 days only of boating under the influence convictions. The bill requires notice of 1<sup>st</sup> and 2<sup>nd</sup> degree reckless boating under the influence. The DEP commissioner must suspend the certificate for the applicable period specified in the bill.

The bill also requires the Court Support Services Division to send DEP a record of people who satisfactorily complete the pretrial alcohol education required under the bill for boating or reckless boating under the influence. DEP must keep the record for seven years as part of the person's boater certification record.

### **BOAT REGISTRATIONS AND REGISTRATION DECALS**

By law, operating a vessel in state waters that is not properly registered or numbered is subject to a fine of (1) between \$25 and \$200 for a first offense and (2) between \$200 and \$500 for subsequent violations. The bill specifies that a person who uses a (1) boat registration or registration decal that was issued to another person or (2) registration or registration decal on a boat other than the one to which it was issued is subject to up to a \$100 fine, up to 30 days imprisonment, or both.

### **WATER SKIING MARK COURSE JUMP RAMPS**

The bill requires an informational hearing instead of a public hearing for a proposed marked course or jump ramp. It specifies that the DEP commissioner may issue or deny authorization for the course or ramp and must consider its direct environmental impact. Current law does not specify that the commission consider the environmental impact of

the course or ramp.

The bill also (1) allows the DEP commissioner to impose conditions necessary to protect public safety, welfare, or the environment when he authorizes a marked course or jump ramp and (2) requires municipalities to obtain written authorization to have them.

## **COMMENT**

### ***Disobeying Regulations***

Under current law, which the bill does not change, operating a vessel or engaging in an activity contrary to the regulations is an infraction, which is punishable by a fine usually set by Superior Court Judges, of between \$35 and \$90, plus an additional fee and a \$20 surcharge. The bill also subjects such activity to a fine of between \$100 and \$500.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute Change of Reference

Yea 25      Nay 0

Judiciary Committee

Joint Favorable Substitute

Yea 39      Nay 0